

LAW AND THE ART WORLD

Issues of concern: Copyright and contracts

By Bill Frazier ©2014

Copyright regulations continue to change and artists are cautioned to keep up to date on the law. Although the full copyright notice is no longer required on artwork, it is a good practice to continue applying it. The notice consists of the artist's name, the copyright symbol ©, and the date of completion.

Internet and other forms of piracy and infringement are expanding, so it is essential that artists take advantage of every technique and regulation designed to protect their ownership interests in their artwork. As so many have said, the internet is the biggest copy machine in the world.

It is also a tremendous marketing tool for artwork. Many artists and most galleries now have internet sites and tens of thousands of works of art have sold on ebay, personal websites and other internet sites. Despite efforts by Congress and webmasters to protect images, theft and piracy continue to flourish.

Artists, remember that when you sell your artwork, you automatically retain the copyright and all rights to its reproduction. The buyer of your work does not have the right to make prints or other reproductions. The copyright is subject to a separate sale, if you wish, but does not pass with the sale of the physical painting or sculpture.

Encroachments on copyright protection

Several recent court cases have expanded the doctrine of fair use in what seem to many observers to be an encroachment to copyright protection. The courts are saying that so long as the new work "transforms" the work of the artist being copied into new original art, this does not constitute copyright infringement.

Perhaps the federal judge issuing this ruling knows what this means, but most of the rest of us do not. A copy is a copy is a copy. To accept this legalistic rationale, any resulting work from copying another's is transformative.

So far, this has only affected photography and modifications to original photographs. However, in contrast to years and years of cases, does this now mean that a copy in one medium of what someone else did in another is no longer a copy, but rather a transformative new creation?

So, I suspect that you will be hearing more and more about the concept of "transforma-

tive" in relation to artwork and copyright.

According to the copyright law, the copyright owner (artist) has the exclusive right to produce derivative works, which are works that are "transformed or adapted" from his original or earlier work. See www.copyright.gov for further specifics, or at least until the interpretation changes again. Maybe the meanings of transform and transformation have changed. Irritating, isn't it?

Read it before you sign it

I know that most artists do not like contracts and legal entanglements. However, I want to stress this next point and I cannot emphasize it enough: **READ AND UNDERSTAND THE TERMS OF THE CONTRACT BEFORE YOU SIGN IT.**

If you do not understand the wording or a concept, ask for an explanation. Preferably, ask your lawyer to review it with you. The fee will be much less than the cost of a lawsuit several years later. Also, it will be much less stressful and costly than the ill will generated by future misunderstandings.

Just because one side presents the other with a pre-printed contract or agreement does not mean that the terms are not subject to further negotiation. They can always be changed, modified, deleted, or adjusted as necessary for both parties to be satisfied. A contract will not be successful unless both parties can benefit.

Beware of anyone offering a "take it or leave it" agreement. Avoid any person coming forward with such a contract. Called "contracts of adhesion," they always favor the presenting side, are designed to intimidate, and should be rejected.

The same advice applies to any type of contract that says that it is "not subject to negotiation," whether related to art business or not. I would go a step further here and suggest that you not get involved at all with anyone approaching you with such an agreement. If you become tempted, take a deep breath and call a knowledgeable advisor, or call my telephone number or send an email so I can talk you out of it!

Violation of these suggestions is at your peril. One person recently signed away all of his copyright protection by not paying attention. He never read the agreement, never questioned the meaning of its provisions and failed to seek advice about it.

Enforcement of contract provisions in



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court is always problematic, especially if one party has waited a long time to try to change something, or where both parties have acted on the agreement for a long period of time. Please keep in mind the time and stress associated with court involvement. Avoid the court system at all costs and spend your time on your art.

Practice due diligence

All copyright-law jurisdiction is at the federal court level and is very expensive. A better alternative is to do your homework ahead of time and be careful in entering business relationships. These same comments apply whether you are an artist, art dealer or collector.

I am sure that most of you have heard of the concept of "due diligence," so take advantage of its opportunities.

An acceptable agreement does not need to be 15 pages long. Keep in mind the due diligence above. Simply be careful about your art business involvements.

There are a number of good business guidebooks and books on legal forms for artists available in bookstores and over the internet that can be helpful, but none are a substitute for a lawyer's good legal advice.

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Website helps integrate technology

Struggling to integrate technology into your organization? The Progressive Technology Project may offer some solutions.

The PTP offers a Technology Assessment and Planning website (www.progressivetech.org), which includes resources that arts organizations can use to learn how to improve their application of technology. Documents on the site include "Assessment Guide for Organizers," "Organizational Technology Assessment" and "Planning Tool and Technology Planning Guide." All are in PDF format.

— National Assembly of State Arts Agencies

Tech Talk: Online meetings in the digital age

By Mark Ratledge

In July, I was invited to be a presenter for a webinar arranged by a software company in California. It's funny to think about it now, but I had to learn how to use a web service called GoToMeeting for the webinar. All this just goes to show us that there's always something new to learn in the tech world.

For those new to the buzzword "webinar," it means what it sounds like: it's a seminar on the web. Webinars can be a video-conference with colleagues, or a class or educational seminar. MAC often lists webinars for the arts community in its email newsletter.

I found GoToMeeting easy to set up and learn how to use. GoToMeeting requires a small software installation on your PC or Mac, but it seems bug free. And GoToMeeting worked very well for the organizers in Silicon Valley, me and the three other presenters, and the 100-odd listeners around the world.

Thanks to GoToMeeting, the webinar was a good combination of technology and simplicity. There was no need for me and the other presenters to be "talking heads" on everyone's screen, although GoToMeeting supports video conferencing.

The webinar was really a telephone conference call and computer screen share of the company's PowerPoint presentation. That meant that listeners could check their screens for the PowerPoint slides when needed, or leave for a little while to deal with other things in their office or home.

For the webinar presenters, like me, there was a GoToMeeting window on my screen that listed the organizers, who was speaking and who was on standby, the time elapsed, and more. Before the webinar, invitations went out via email, with a simple link to click in order to register; and another email went out with

a link to a reminder to join the webinar at the given day and time.

GoToMeeting is a great service and might be useful for you as an artist or an organization in order to present a webinar, or simply share screens with one or two others for a meeting or help session. I can see using GoToMeeting myself at some point to work with clients.

GoToMeeting has a 30-day free trial for its full version, which supports video and other features, like tools for the organizers, unlimited subscribers, and more. But there is now a free version called GoToMeeting Free. It offers free video conferencing with up to three people using Chrome, Google's web browser. No software download is needed, and the free version support PDFs, Word documents and PowerPoints.

You need to use Google Chrome for the free service, because all the networking technology takes place right in the browser. But you may already be using Chrome; or, if needed, Chrome is a free download itself.

In any event, the price is right to try GoToMeeting, and it may turn out to be a valuable networking tool for you. Check gotomeeting.com.



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